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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,490	10/19/2001	Yumiko Seki	16869S-037000US	7401
20350	7590	06/24/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			NANO, SARGON N	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,490

Applicant(s)

SEKI ET AL.

Examiner

Sargon N. Nano

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 2157

### **Amendment**

1. This action is responsive to the amendment filed on April. 18, 2005. Claims 1 – 10 are pending examination. Claims 1 – 10 were amended.

### ***Claim Objections***

Claim 8 is objected to because of the following informalities: in line 2 the claim reads 'coupled to", it is not clear to the examiner what the claim is specifically directed to, but it is prosecuted as best understood by the examiner. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Jindal et al U.S. Patent No. 6,092,178 (referred to hereafter as Jindal).

Jindal teaches network naming service, such as Domain Name Service, where a policy is selected for choosing a preferred server from a plurality of servers according to specified operational characteristics (see abstract).

Art Unit: 2157

As to claim 1, Jindal teaches a managing program of determining operation of a service in a system having a plurality of computers, each of said computers serving to execute the service, comprising:

a plurality of operation rules for defining operation of said service , said operation rule being generated by editing and analyzing log information generated by executing said service (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said operation rules, respectively ( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

wherein the log information generated by executing said service is collected from each of said computers and if said collected log information meets said condition, an instruction for controlling the service executed on said computer is outputted on the basis of the operation rule associated with said condition ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 2, Jindal teaches a managing program as claimed in claim 1, wherein said operation rule is a rule for distributing a request for the service into said computers, said condition is an operating rate of each of said computers and the operating rate of said computer is derived from said log information collected from each of said computers and an instruction for executing the operation rule in which said operating rate meets said condition is outputted (see col. 8, lines 31 - 43, Jindal discloses

Art Unit: 2157

gathering information from many servers to determine which server has the fastest response time for execution).

As to claim 3, Jindal teaches a managing program as claimed in claim 2, comprising the steps of displaying the operation rule in which said derived operating rate meets said condition; inquiring if said operation rule is to be executed; and in the case of giving an input of executing said operation rule, outputting an instruction for executing said operation rule (see col.8, lines 33 – 46, Jindal discloses choosing the least loaded server which has the fast time, collecting relevant information for execution).

As to claim 4, Jindal teaches a managing program of determining operation of a program to be executed by a computer having a plurality of programs, comprising:

a plurality of program operation rules for defining operation of said program the program operation rule being generated by editing and analyzing log information generated by executing the program (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said program operation rule associated with said program operation rule( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

wherein the log information of the program to be executed is collected from each of said computers and if the collected log information meets said condition, said program operation rule associated with said condition is to be executed by said

computer ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 5, Jindal teaches a managing program as claimed in claim 4, comprising the steps of:

displaying an executing state of said program executed by said computer from said collected log information; displaying an inquiry as to whether or not the program operation rule corresponding with the condition met by said collected log information is to be executed; and if an input is given of executing said program operation rule in response to said inquiry, enabling said computer to execute said program operation rule ( see col.8 , lines 33 – 46 , Jindal discloses choosing the least loaded server which has the fast time, collecting relevant information for execution).

As to claim 6, Jindal teaches a operation managing program as claimed in claim 5, wherein the displayed executing state of said program represents on each of said programs a start time and an end time included in said collected log information (see col. 8, lines 34 - 46, Jindal discloses the fastest response time of an application instance).

As to claim 7, Jindal teaches a operation managing program as claimed in claim 4, wherein the operation rule of said program defines the executed program and a program to be executed next (see col. 10 lines 24 – 44, Jindal discloses updating file of all for all applications being load balanced).

As to claim 8, Jindal teaches a method of managing a plurality of computers in a system having said computers each of which provides a service, comprising:

in at least one of said computers, holding a plurality of operation rules for defining operation of said service and a plurality of conditions for executing said operation rule on each of said operation rules the operation rule being generated by editing and analyzing log information generated by executing the service, (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

collecting the log information generated by executing the service from each of said computers and said collected log information meets said condition, outputting an instruction for executing the operation rule associated with said condition ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 9, Jindal teaches a control method of controlling operation of a plurality of programs to be executed by a computer having said programs, comprising:

holding a plurality of program operation rules for defining operation of said programs , the program operation rule being generated by editing and analyzing log information generated by executing the program and (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said program operation rules, respectively ( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

collecting the log information of the executed program and if said collected log information meets the condition, executing the program operation rule associated with

Art Unit: 2157

said condition on said computer ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 10, Jindal teaches a system connected having a plurality of computers coupled to each of which provides a service, comprising:

at least one of said computers holding a plurality of operation rules for defining operation of said service and a plurality of conditions for executing each of said operation rules the operation rule being generated by editing and analyzing log information generated by executing the service (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);and

wherein the log information of said executed program is collected and if said collected log information meets the condition, the operation rule associated with said condition is executed ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

### ***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



Art Unit: 2157

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sargon N. Nano whose telephone number is (571) 272-4007. The examiner can normally be reached on 8 hour.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2157

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sargon Nano  
June 21 , 2005

  
ARIO ETIENNE  
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